STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1727

State of Minnesota,
Respondent,

vs.

Blair Benedict Oberton,
Appellant.

Filed May 8, 2023
Affirmed
Larkin, Judge

Hennepin County District Court
File No. 27-CR-22-22351

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Kristyn M. Anderson, Minneapolis City Attorney, Cody Goodchild, Assistant City Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Richard Schmitz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Reilly, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his contempt sentence, arguing that the district court abused its discretion by summarily imposing a 180-day sentence without making findings to support the sentence. We affirm.

FACTS

On November 7, 2022, appellant Blair Benedict Oberton appeared with counsel for a bail hearing on a trespass charge. The prosecutor requested $300 bail. The prosecutor noted that Oberton had recently been released to a treatment facility in connection with a separate felony charge, but he left the facility and went to the University of Minnesota, a location that he was prohibited from visiting. The prosecutor stated that Oberton had 20 additional trespass charges related to that location. Oberton's attorney asked that he be released without bail or with minimal bail. Oberton's attorney informed the court that Oberton had housing at the facility where he attended outpatient treatment for substance abuse. The district court set Oberton's bail at $300, with conditions.

The following exchange ensued:

> District Court: He is to remain law abiding, he's to make all his court appearances -- law abiding includes obeying all trespass orders, and attend --
>
> Oberton: Well, what about Rule 25 out of custody?
>
> District Court: -- treatment.
>
> . . . .
>
> Oberton: What about . . . out of custody Rule 25, with bed-to-bed transfer, can we do that?
>
> District Court: Okay.
>
> Oberton: [H]e's making me post bail?
>
> (OFF THE RECORD DISCUSSIONS)

Defense Counsel: Your Honor, Mr. Oberton would like me to request an out of custody Rule 25 with a bed-to-bed transfer, at this time.

District Court: [I'm] . . . not tracking with that. If he's in treatment, why does he need another Rule 25?

Oberton: That's what I'm saying, . . . that's the whole issue, that's the problem is . . . incompetence; I'm already in treatment. And . . . for police to pick me up --

District Court: Then you don't need a Rule 25.

Oberton: -- when I'm in treatment -- it's out-patient treatment, it's . . . completely incompetent. I'm already in treatment.

District Court: Then you don't need a Rule 25.

Oberton: [F]or police to pick me up on the way to treatment is completely incompetent, completely. I'm already in treatment, you can contact everybody right now --

District Court: No. Right now . . . you're in jail.

Oberton: Yeah. Right now, I'm in jail, but I'm currently also in treatment, concurrently. It -- it's ridiculous and you're . . . requiring bail. When . . . I already have a Court Order --

District Court: That's --

Oberton: -- in place that . . . says Rule 25? That's completely incompetent.

District Court: Thank you. That's enough. You're done.

. . . .

Oberton: So, . . . what do I do now? I have to wait now all the way until December 6th if I can't post bail? Well, this f-cking -- this f-cking dumbass f-cking jury is f-cking stupid, f-cking, uh, incompetent. I'm not starting sh-t, man. I'm not starting sh-t -- f-cking.

Deputy: Hey. Knock it off. Get going. Go that way. Go that way. Come on out.

Oberton: Sh-t, man.

Deputy: Come this way.

Oberton: F-cking incompetent, it's f-cking sh-t.

Deputy: Go. Come on out.

Oberton: F-ck. I'm not trying sh-t. F-cking the Judge. F-ck the Court. F-ck you.

Deputy: Grab him.

District Court: Uh, [defense counsel], *your cli -- client's just been found in contempt*. He'll . . . be held --

Oberton: Held, what? Held --

Deputy: Held that -- Go that way.

Oberton: -- what? Held, what?

District Court: How about --

Oberton: Held, what?

District Court: How about 6 month[s]?

Oberton: How about . . . this motherf-cker, (indecipherable) the f-ck down.

Deputy: Go that way, or you're going to get tased.

Oberton: How about release the f-ck now. How about that? Release the f-ck now, I want my Rule 25. How about that?

. . . .

Deputy: Calm down.

> Oberton: I want my Rule 25. How about that? Rule 25. F-ck that. How about that Rule f-cking 25? You f-cking bastard. Rule f-cking 25.
>
> Deputy: Come on, man.
>
> Defense Counsel: Mr. Oberton.
>
> District Court: Six months . . . in jail. Do we know . . . how we do that?
>
> Clerk: Uh, we'll find out, Your Honor. Six months, you said?
>
> District Court: [Defense counsel], it'll -- I'll leave it to you and your office to figure out how you're going to, uh, allow Mr. Oberton to purge himself of the contempt. It's pretty spectacular, actually.

(Emphasis added.)

The district court's sentencing order indicates that Oberton was convicted of gross-misdemeanor direct contempt in violation of Minn. Stat. § 588.01, subd. 2(2) (2022) and sentenced to 180 days in jail.

Oberton appeals.

DECISION

I.

Oberton contends that the district court erred by imposing an excessive contempt sentence and by failing to make findings to justify the sentence. He asks that his sentence be reversed and that the case be remanded to the district court with instructions to impose a sentence that does not exceed 90 days.

In Minnesota, contempt powers arise from two sources: Minnesota's contempt statutes, Minn. Stat. §§ 588.01-.21 (2022), and the judiciary's "inherent authority." *State*

v. Tatum, 556 N.W.2d 541, 544-47 (Minn. 1996). "Contempt historically has been regarded as part of the court's inherent power to punish summarily offenses committed in its presence." *In re Welfare of R.L.W.*, 245 N.W.2d 204, 205 (Minn. 1976).

There are two types of contempt: remedial and punitive. *Tatum*, 556 N.W.2d at 544. Remedial contempt vindicates "the rights of a party by imposing a sanction that will be removed upon compliance with a court order that has been defied." *Id.* Punitive contempt vindicates "the court's authority by punishing the contemnor for past behavior." *Id.*

In addition, contempt may be direct or constructive. *Id.* Direct contempt is disruptive conduct that occurs in the presence of the court, whereas constructive contempt involves "a variety of conduct" committed outside the presence of the court, "of which the court has no personal knowledge." *Id.* at 544-45; *see also* Minn. Stat. § 588.01 (defining direct and constructive contempt).

Lastly, there are two kinds of criminal contempt in Minnesota's contempt statutes: "one encompassed by sections 588.01-.15 that is punishable at the discretion of the judiciary, and the other in section 588.20 that is prosecutable by the state like any other crime." *State v. Jones*, 869 N.W.2d 24, 27 (Minn. 2015) (quotation omitted); *see also Tatum*, 556 N.W.2d at 546 (discussing section 588.20).

"The district court's decision to invoke its contempt powers is subject to reversal for abuse of discretion." *In re Welfare of Child. of J.B.*, 782 N.W.2d 535, 538 (Minn. 2010). We review a punitive contempt order to ensure that it is not arbitrary, capricious, or oppressive. *See Tatum*, 556 N.W.2d at 547 ("[A]ppellate courts in this state retain their

traditional power to review punitive contempt orders for arbitrariness, capriciousness, and oppressiveness.").

Under section 588.20, the misdemeanor jail sentence for contempt is limited to 90 days. *See* Minn. Stat. § 588.20, subd. 2 (listing misdemeanor contemptuous conduct); Minn. Stat. § 609.02, subd. 3 (2022) (defining a misdemeanor as a crime with a maximum jail sentence of 90 days). The supreme court has directed district courts to defer to that penalty limitation when imposing contempt sanctions pursuant to its inherent authority, explaining that "the principle of comity recommends deference to legislative judgments, especially in this area of law which so closely borders traditional criminal statutes." *Tatum*, 556 N.W.2d at 547. Thus, the supreme court stated that the penalties imposed in section 588.20 "should be the presumptive maximum sentence for such conduct as a matter of comity and deference." *Id.* In sum, the presumptive maximum sentence for a summarily imposed punitive sanction for direct contempt is 90 days. *Id.*

Oberton relies on the supreme court's instruction in *Tatum* that a district court should ordinarily limit its sanction to 90 days and argues that the district court abused its discretion by failing to make findings to justify the 180-day sanction in this case. In *Tatum*, the district court found a witness in direct criminal contempt of court for refusing to testify and summarily sentenced him to six months in the workhouse, citing the contempt statutes. *Id.* at 543-44. But because the district court summarily imposed a sentence, the supreme court determined that the district court had in fact relied upon its inherent authority, and not the contempt statutes. *Id.* at 544-48. The supreme court therefore remanded the case for the district court to reconsider its six-month sentence, stating that "a 90-day sentence

and a $700 fine is the maximum penalty for ordinary instances of summary and punitive contempt orders" and that "[t]he district court should have an opportunity to justify a more severe sentence for Tatum." *Id.* at 547-48.

Although *Tatum* suggests that a district court should explain its decision to exceed the presumptive 90-day maximum when summarily imposing a contempt sentence under its inherent authority, this court's precedential decision in *State v. Lingwall* is directly on point and indicates that findings are not necessary to support such a sentence. 637 N.W.2d 311, 314 (Minn. App. 2001). In *Lingwall*, the defendant uttered three obscenities, including one directed at the district court, and the district court summarily punished the defendant with three separate six-month contempt sentences. *Id.* at 312-13. Although there was no indication that the district court made findings to justify its 180-day sentences, this court concluded that there were "aggravating factors" that justified "a contempt sentence greater than the ordinary 90-day maximum" because the defendant's "stream of profanities constituted a highly aggravated verbal attack on the court's authority" and the statements "were extremely disrespectful, totally unprovoked, and continued even in the face of the court's findings of continued contempt." *Id.* at 312-14.

Lingwall indicates that the district court in this case did not abuse its discretion by imposing a 180-day sentence without making findings to support it. Oberton's conduct was far worse than the defendant's conduct in *Lingwall*. Oberton uttered well over a dozen obscenities and directly insulted the court. When compared to the circumstances in *Lingwall*, the record here clearly supports a conclusion that Oberton's actions were severe enough to warrant the six-month sentence. We therefore do not remand, as the supreme

court did in *Tatum*, to give the district court "an opportunity" to justify the more severe sentence for Oberton. 556 N.W.2d at 548.

Oberton argues that the 180-day sanction is disproportionate to sanctions imposed in other contempt cases. For example, in *State v. Schloegl*, the defendant engaged in a "tirade" against the judge, where he "yell[ed] profanities in open court" and threw a pitcher of water to the floor, leading to a delay in the proceedings so the defendant could be removed from the courtroom. 915 N.W.2d 14, 17, 20-21 (Minn. App. 2018), *rev. denied* (Minn. July 17, 2018). His contempt sentence was 90 days. *Id.* at 21. But *Lingwall* indicates that the 180-day sentence in this case is not excessive. Indeed, the *Schloegl* court noted that the defendant's 90-day sentence in that case was "sort of a bargain" compared to the sentence in *Lingwall. Id.*

Oberton also argues that his 180-day sentence "can be seen as disproportionate when compared with the sentences applicable to, and commonly imposed for, other criminal offenses." But the supreme court's decision in *Tatum* indicates that a six-month sentence is permissible. 556 N.W.2d at 548. And under *Lingwall*, the district court's imposition of a 180-day sentence in response to Oberton's contemptuous behavior was not an abuse of discretion.

Affirmed.